



# California Fair Political Practices Commission

December 26, 1989

Kurt Hahn  
Director of Finance  
126 Matheson Street  
Healdsburg, CA 95448-0578

Re: Your Request for Informal Assistance  
Our File No. I-89-461

Dear Mr. Hahn:

This is in response to your request for advice concerning your responsibilities as finance director and chief investment officer of the City of Healdsburg, under the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup> Because your inquiry is of a general nature and does not refer to a specific decision before your agency, we treat your request for advice as a request for informal assistance.<sup>2</sup>

Additionally, our advice is limited to laws included in the Political Reform Act. Please contact your city attorney or the office of the attorney general for advice concerning other laws, such as Government Code Section 1090 which prohibits a public official from having a financial interest in a contract.

## QUESTION

Will you have a conflict of interest if you become an initial stockholder and director of a bank which transacts business in your jurisdiction?

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<sup>1</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3) copy enclosed.)

### CONCLUSION

If you become an initial stockholder and director of a bank which transacts business in your jurisdiction, you will be prohibited from participating in any decision which will have a reasonably foreseeable material financial effect on the bank.

### FACTS

A community bank is organizing in the community of Windsor, adjacent to but outside the jurisdiction of the City of Healdsburg. You have been invited to become an initial stockholder and possibly a director of the new bank. You have advised me that your initial investment in the bank will be at least \$1,000. Your investment will represent less than a 10% ownership of the new bank.

You are the city finance director and chief investment officer of the City of Healdsburg. You are concerned about the possibility that the new bank could be involved in projects within your jurisdiction as a lender, or as an equity partner. One or more of the bank officers or directors may also contract as a developer in your jurisdiction.

### ANALYSIS

Section 87100 prohibits a public official from making, participating in, or attempting to influence a governmental decision in which the official knows or has reason to know he has a financial interest.

An official has a financial interest in a decision when the decision will have a reasonably foreseeable and material financial effect, distinguishable from the effect on the public generally, on the official, a member of his or her immediate family, or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

\* \* \*

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103(a) and (d).

You are a public official by virtue of your position as city finance director and chief investment officer. (Section 82048.) Consequently, as an investor and director of the bank you will be prohibited from participating in city decisions which will have a reasonably foreseeable material financial effect on the bank.

Commission regulations define when the reasonably foreseeable effects of a decision are material. A decision which will affect the bank directly is considered material. The bank is directly involved in a decision if it:

(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or;

(2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency.

(3) A person or business entity is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person or business entity.

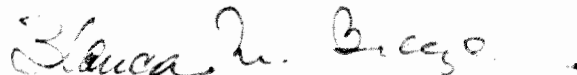
Regulation 18702.1(b), copy enclosed.

On the other hand, if a decision will affect the bank indirectly, the materiality of the decision is controlled by Regulation 18702.2 (copy enclosed) which provides guidelines for determining whether a decision will have a material financial effect on a business entity. For example, this regulation would apply if the decision concerned a project in which the bank was not a partner, but which would nonetheless have a reasonably foreseeable effect on the bank.

We trust this letter clarifies for you the conflict-of-interest provisions of the Act. In the future, should you need further assistance in determining whether a particular transaction creates a disqualifying conflict of interest, do not hesitate to call me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel



By: Blanca M. Breeze  
Counsel, Legal Division

KED:BMB:plh

Enclosures



# California Fair Political Practices Commission

August 8, 1989

Kurt Hahn  
Director of Finance  
City of Healdsburg  
P.O. Box 578  
Healdsburg, CA 95448-0578

Re: Letter No. 89-461

Dear Mr. Hahn:

Your letter requesting advice under the Political Reform Act was received on August 7, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Blanca Breeze an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan  
General Counsel

KED:plh



FPPC

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**CITY OF HEALDSBURG**  
City Hall — Administrative Offices  
P.O. Box 578  
126 Matheson Street  
Healdsburg, CA 95448-0578

City Manager's Office	(707) 431-3317
Finance	431-3305
Parks & Recreation	431-3301
Personnel	431-3322

August 2, 1989

California Fair Political Practices Commission  
428 "J" Street  
Suite 800  
Sacramento, CA 95814

SUBJECT: Request for Letter Opinion

Gentlemen:

A community bank is organizing in an adjacent community (Windsor). Its office will be located outside my city. I have been invited to become an initial stockholder and possibly a Director of the new bank.

I am the City Finance Director and Chief Investment Officer of the City of Healdsburg. It is my understanding that pursuant to Section 1091 of the Government Code I must not make any investments or deposits in or through a bank which I would be an officer or stockholder.

The area of question relates to the possibility that the bank could be involved in projects within our community as a construction or take out lender, equity partner and/or that of one or more of the bank officers or directors is involved as a developer within the City and/or CRA project area.

Please advise me if you see any conflict or serious appearance of conflict.

I might add that one of our Councilmembers is potentially in a similar position and if your opinion would vary between either position (Councilman vs Finance Director) please note same.

Respectfully,

Kurt Hahn  
Director of Finance

KH/jd

cc: Michael A. Wilson  
Bob Crawford